

United States District Court  
District of Massachusetts

Robert M McCaffery,	)	Civil Action No.
	)	
Pro se Petitioner,	)	
	)	05-40146-RWZ
	)	
v.	)	
	)	
David L. Winn,	)	
	)	
Respondent.	)	

Motion for Summary Judgement

The Petitioner, Robert M. McCaffery, hereby moves for Summary Judgement due to Respondent's lack of ability to care for and provide adequate medical care.

*Robert M McCaffery*  
Robert M McCaffery  
Petitioner

## Petitioner's Arguments in Favor of Motion for Summary Judgment

### History

Petitioner, Robert M McCaffery (RMCC) was diagnosed with severe chronic Pancreatitis in 1980. Pancreatitis, along with creating Diabetes, malnutrition and others, creates intense pain. People suffering from Pancreatitis have a 50% or greater chance of cancer. RMCC has undergone numerous surgeries, including pancrease by-pass and pancrease transplant, in an attempt to control the pain. He has also underwent 10 nerve blocks and presently has two electronic nerve stimulators implanted into his spinal cord. After years of attempts and combinations of factors a method of control

using narcotics and biofeedback has allowed RMCC an opportunity of somewhat normal existence.

That is to say not pain free, but less pain. RMCC's narcotic use was minimal and scheduled as such.

.5	percoet	@	6:00	A.M.
.5	"	@	8:00	P.M.
.5	"	@	11:00	P.M.
.5	"	@	12:00	NOON
.5	"	@	4:00	PM
.5	"	@	5:00	PM
.5	"	@	7:00	PM
.5	"	@	9:00	PM
.5	"	@	11:00	P.M. if necessary

Along with a narcotic, Percocet, RMCC also takes 17 pills daily along with three injections of insulin.

## Argument

1) The Petitioner (RMCC) has not filed any formal request for an administrative remedy as he was informed by Physician Assistants as well as Physicians themselves that there would be no administrative relief as, (A) "the (drug) is too expensive to be used here", (B) "we don't do that here", (C) "it (an answer) will take at least 6 months and will never be granted" and (D) "we need several months to build a case to present, and in the meantime there is nothing we can do to help", and finally, (E) "we do not have the staff necessary to provide you with the drugs you need." Therefore, RMCC has come to this court to

seek assistance.

- 2) The petitioner, RMCC, has been denied certain drugs due to expense.

Upon arrival at Deven, RMCC was taking Lantus, a long acting form of insulin. Humulin, another less expensive form of insulin has been substituted with the result of RMCC's sugars to now be at unacceptable levels. RMCC was also taking Nexium, a drug which assisted in the digestion of foods, as well as in RMCC's case contains an ulceration. Deven, at first, substituted Prilosec, a less effective and expensive drug, and recently has withdrawn the Prilosec and substituted a drug which

must be purchased by RMCC (an OTC [over the counter] drug purchased at the commissary).

RMCC has since been unable to digest food which has caused vomiting on a daily basis. (The vomiting is being treated by daily injections. Finally, RMCC was taking Neurontin, a drug used to combat Neuropathy, a disease associated with Diabetes which attacks the nerves in the legs and feet causing severe pain. While at Deven, RMCC has been denied this drug due to cost, with no drug being substituted.

### 3) Pain Control

The best, and most accepted method of pain control using

drug therapy is to use as small a dosage as possible while at the same time maintaining a constant level of narcotic in the body. To this end, RMCC, after years of trial with his doctors have found that the schedule previously mentioned is the most effective for him. While at Deven he is receiving:

two (2) percocet @ 6:30 A.M.  
 two (2) " @ 11:00 A.M.  
 30 mgs morphine @ 7:00 P.M.

Percocet is a "fast acting" narcotic with an effective life of 2-4 hrs. Because of this schedule, RMCC lives in almost constant pain. Deven has stated that they "do not have the staff necessary to perform any other schedule", other than the one shown above.

Deven, instead, prescribes more and stronger narcotics while ignoring medical practices.

## Conclusion

The petitioner, RMCC, has accepted the guilt of his actions and readily accepts his punishment. He does not wish or ask for his sentence to be reduced. RMCC does however ask for him to serve the remainder of his sentence while under house confinement so as it will be possible for his doctors to treat him, and he has the ability to follow a medical time schedule which will allow him some freedom from pain. RMCC has pled guilty to fraud, not sickness. His punishment



is to be incarceration not  
life altering pain. It is unfair  
and unjust to purposely make  
RMCC live in this constant  
state.

Rob Mc Caffrey

Robert M Mc Caffrey  
Petitioner